SUPREME COURT, U. S.
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 953

D. J. MILLER,

Petitioner,

v.

COUNTY OF LOS ANGELES,
a Political Subdivision of the State of California,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI

Petitioner prays for a Writ of Certiorari to review the judgment of the U. S. Court of Appeals for the Ninth Circuit.

OPINION BELOW

The decision of the Court of Appeals is reproduced herein as Appendix "A".

JURISDICTION

The judgment of the Court of Appeals was entered on July 21, 1966. Petition for a rehearing en banc was denied on September 21, 1966, and is reproduced herein as Appendix "B". The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Whether without notice to the property owner as prescribed by law although his address was available, the County of Los Angeles, California may acquire by confiscation or induced forfeiture the real property of Petitioner worth over sixty times the amount of the delinquent tax debt under circumstances where the legal description of the property was erroneously changed, compounding and supplementing verbal misinformation concealing the fact that the property was to be or had been acquired.

Whether the Statutes of Limitations of one year to file legal action are overruled by the due process requirements of the Fourteenth Amendment of the Constitution of the United States backed up by other Doctrines of Law or the Statute of Limitations of three years after discovery of mistake to file action.

STATUTES INVOLVED

The pertinent provisions of Sec. 175, 3521 and 3809 (one year limitation on action); 3358, 3799 (notices) of the Revenue and Taxation Code of the State of California, and Sec. 338 of the Civil Procedure Code, Subdivision 4 (three year limitation on action) are set forth in Appendix "C".

STATEMENT OF THE CASE

In December 1963, Petitioner filed the complaint in the Federal District Court at Los Angeles, California over ownership of his 200 acres of rough mountainous land but valuable, lying just beyond respondent's smog zone, confiscated because of delinquent taxes. Respondent did not answer the complaint; the court granted its motion to dismiss on various grounds including lack of jurisdiction.

The Appellate Court of the Ninth Circuit reversed and remanded, 341 F.2d 964, holding that there was jurisdiction under a *constitutional question* but not by reason of diversity of citizenship. After remand, the District Court granted the county's motion for summary judgment; on the second appeal the Appellate Court affirmed.

The county has relied throughout on Statute of Limitations of one year. The Court of Appeals affirmed on this basis.

In the proceedings below, the respondent cited decisions of the California Courts. Petitioner has contended that they were not applicable as well as out of context with this case and he relied on the due process clause of the Fourteenth Amendment supported by the doctrines of equitable estoppel, constructive trust, as well as constructive fraud.

Although the Court of Appeals reversed because of the "constitutional question," the District Court made no ruling on these doctrines as applied to the strange lack of *due process:* circumstances in the confiscation.

The reason urged for not filing suit sooner was that petitioner did not know that his property had been acquired by the county until a date within one year from the time of filing suit. The reason he did not know sooner was that the county furnished misinformation which also prevented timely redemption of the delinquencies.

In the administrative proceedings leading to the complaint a long correspondence ensued with various officers of the respondent and it was not until receipt of their letter[1] dated April 30, 1963 (less than a year before the complaint was filed), that petitioner actually knew that it was his property, that is, the property in question.

In correspondence prior to said letter, the legal description of the land was erroneously described by respondent as being a legal description consisting of only ten acres but labeled forty acres. Not until the case reached the Appellate Court on the second appeal did the county admit the legal description furnished petitioner was not of his land. In the District Court, plaintiff (petitioner herein) submitted *"Exhibit C" (Cl. Tr. 114)* to his motion for Judgment on the Pleadings which the respondent in its brief on the second appeal discussed as follows:

> ". . . and that on January 10, 1962, in response to a letter from appellant apparently dated December 16, 1961, he was advised by the tax collector that *the property* had been deeded to appellee on October 19, 1960 (Exhibit C, Cl. Tr. 114)." (Emphasis supplied)

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[1] The text of the letter is:

"In reply to your letter of April 18, 1963, to Mr. John D. Cahill, Deputy County Counsel regarding the description of the property in Section 15 T5N R17W please be advised that it was assessed as two separate parcels, described as follows:

160 acres NW 1/4 of Sec. 15 T5N R17W and 40 acres NW 1/4 of SE 1/4 of Sec. 15 T5N R17W.

Very truly yours,

HAROLD J. OSTLEY
COUNTY TAX COLLECTOR

L. E. Skinner
Head Clerk
Tax Deeded Lands Section"

Then, the county in said brief on page 19 said:

> "Appellee would point out that the *only* misinformation contained in that letter [above tax collector letter of January 10, 1962] *is the legal description* contained therein." (Emphasis supplied)

The legal description in the letter was so different that to determine it was *"the property"* was *impossible*.

The misinformation that prevented redemption of the property was shown by petitioner's affidavit to his motion for Judgment on the Pleadings in the District Court, setting forth verbal misstatements of the respondent's officers which petitioner relied on to his detriment.

Compounding the erroneous information, plaintiff below contended, was the fact that there were no notices as provided by §§ 3358, 3799, California Revenue Taxation Code, of any proposed sales of the property; also, he pointed to the facts: that one of the county's employees had written a letter to him seeking to purchase the property and that this employee was in the particular operational branch which processed tax delinquent property. Moreover, that Exhibit B (Cl. Tr. 112) to said motion was a document showing the property owner's (petitioner) correct address was known and used by the county. This document was a receipt for partial payment of delinquent taxes where the situation was identical in that the property was encumbered with approximately the same number of years' back delinquent taxes but was redeemed.

Further stressed was the fact that in the foregoing instance redemption occurred *after* notice.

The county's position for not mailing any notice is that petitioner's name and address was not inscribed on the assessment rolls because there was no statement of property ownership furnished the assessor. In opposition to this excuse letters were submitted from respondent's neighboring counties all saying that such statement to the assessor was not required particularly when the *real* property was unimproved.

Most strongly urged was that the tax redemption department had said address was available to it, consequently, its failure to send the notice was a violation of trust since there was dependence on receiving notice as promised.

It was also admitted that redemption of properties many years more delinquent than property at bar was routinely approved. In other words, that it had been the mode to allow property to be encumbered with delinquent taxes as a lien suffer the interest penalty and redeem before sale, after notice.

In said affidavit, petitioner averred he was promised that he would receive notice prior to any sale of the property and that he had contacted the tax sales department at the time of holding the much publicized *annual public auction to third parties* of such delinquent tax properties. Consequently, he was further misled by the private, surreptitious confiscation.

Said affidavit avers the property is worth over sixty times the amount of the taxes due.

REASONS FOR GRANTING THE WRIT

The Court of Appeals remanded because of the "constitutional question" but the record shows it was never reached in the District Court, therefore, it is not reflected in the instant decision under review. Subsequent to the summary judgment in favor of the county, there have been important decisions of the California Review Courts holding to the proposition that such Statute of Limitations are not operative when, as here, there are circumstances creating estoppel such as misinformation mixed with or failure to give notice. These equitable relief cases follow the decisions of the high Federal Courts with "due process" being the controlling or cementing factor.

The cases are legend that in Summary Judgment Proceedings the one opposing the motion is deemed to have

his representations, or allegations of the complaint treated as facts. Moreover, in this case, the complaint was not answered.

The county has pleaded that it must be upheld in this matter; otherwise tax titles would be jeopardized. It is conceded that if a third party by public auction had acquired the property, this would be a valid argument. But not here because the county exchanged its legitimate due tax debt for property worth over sixty times the amount of the debt by neglect of duty and trust.

Recent decisions of the California Courts, as well as cases from the Florida Supreme Court and this Court, are discussed in point:

In *City of Bakersfield v. Miller*, 46 Cal. Rptr. 661, the court cited this Court:

> "As is said in *Powell v. State of Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, an opportunity for hearing is one of the essential elements of 'due process'."

The court in *Bakersfield* approvingly quoted from another pertinent case on the question of forfeiture:

> "Neither the *Legislature* nor the *Courts* can dispense with the *Constitutional requirement* of a *Notice* and hearing." (Emphasis supplied)

Finally, at page 671, in *Bakersfield*, the court made its ultimate point appropriate here stating in effect that an investment could not be lost to forfeiture . . ."SO AS VIRTUALLY TO ROB THE OWNERS OF THEIR PROPERTY."

In *Hoffman v. City of Redbluff*, 47 Cal. Rptr. 553, at page 557, the *issue* of the Statute of Limitations was made clear against Respondent as follows:

> "[U]nder the holding in *Chase v. Trout* (1905), 145 Cal. 350, 80 P. 81, reiterated in many subsequent cases (see e.g., *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal. 2d 21, 44, 37 Cal. Rptr. 74,

389 P.2d 538; *Miller v. McKenna* (1944), 23 Cal. 2d 774, 781-782, 147 P.2d 531 (six further citations omitted). . . . *A curative statute may validate all defects in proceedings except those which have resulted in violation of constitutional rights.*" (Emphasis supplied)

Mulkey v. Reitman, 50 Cal. Rptr. 881, at page 884, has the following language, confirming the supremacy of the Federal Constitution as relied upon by Petitioner:

"The supremacy clause of the United States Constitution nevertheless compels that section 26, *like any other state law* conform to Federal Constitutional Standards before it may be enforced against persons who are entitled to protection under that Constitution. (See *Lucas v. Forty-Fourth Gen. Assembly of State of Colorado*, 377 U.S. 731, 736, 737, 34 S. Ct. 1459, 12 L. Ed. 2d 532.)"

When the recent pertinent state cases cited are applied to the circumstances herein it would seem that the weight of the state case law swings to the side of Petitioner.

Furthermore, since the case was remanded because of a constitutional question, Federal law should have been applied to fill in the interstices. The Fifth Circuit Court of Appeals in *McKenna v. Wallace*, 344 F.2d 432 (1965), held accordingly, as shown by headnote three hereby quoted:

"Law applied in diversity cases should be keyed to nature of issue before court, and if non-federal, state substantive law should be applied, but if federal matter is before court, federal law *should* be applied, 28 U.S.C.A. Sec. 1652." (Emphasis supplied)

By failure to equate or give *any* consideration to Federal Case Law, specifically on due process and equitable estoppel, the District Court was in plain error. Such a controlling case ignored below is *Schroeder v. City of New York*, 83 S. Ct. 279. In the *Schroeder* case, the City of New York contended that the property owner's action was barred by a statute providing a *three-year limitation*

period.[2] The property owner contended that she had not been given adequate notice and that such was a deprivation of due process. The city had caused notice to be published according to statute. The trial court granted the city's motion for judgment on the pleadings. This court reversed holding that the newspaper publications and posted notices *"did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment required."* The Court quoted favorably from the earlier case of *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314, 20 S. Ct. 410:

> "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"

This Court in the *Schroeder* case went on to say:

> "The general rule that emerges . . . is that notice by publication is not enough with respect to a person whose name and address are *known or very easily ascertainable* and whose legally protected interests are directly affected by the proceedings in question." At 83 S. Ct. p. 282 (Emphasis supplied)

This Court is further cited, in the premises, as authority for the establishment of a constructive trust in favor of Petitioner by the following venerable holding:

> "Whenever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily *violating* some established

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[2] It is reiterated that one *year* limitations on actions is unreasonable in these circumstances. This short period was clearly intended *only* to protect third parties in interest. Respondent admits there was a mistake, therefore, the three year limitation on actions should control as provided by subdivision 4 of Sec. 338 of the Civil Procedure Code of the State of California. The county has remained silent as to this contention.

> *principle of equity*, the Court will immediately raise a *constructive trust* and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties, who in equity, are entitled to the beneficial enjoyment." *Chapman v. Douglas County*, 107 U.S. 348 2 S. Ct. 62, 27 L. Ed. 378. (Emphasis supplied)

Respondent's position is one in which it owes a real duty to the public amounting to a public trust to follow Constitutional processes. The principle of equity has been violated, Petitioner trusts inadvertently. This Respondent cannot deny nor has it shown any response to Petitioner's question in equity: why, in the circumstances, should it refuse the acceptance of the tax debt offered to be paid? Surely this would be classic equity in its purest crystallization because there would be no loss to the county, it merely would be prevented from unconscionable unconstitutional confiscation.[3]

In *Cook v. Katiba*, 190 So. 2d 309 (Fla. 1966), at page 312, the Supreme Court of Florida held:

> "Equitable estoppel as applied to land titles is a different thing. It depends on the conduct of the parties for its efficacy. It is not concerned with the language of the instrument and may actually *deny the legal effect of the deed.* In *Florida Land Investment Co. v. Williams*, 1928, 98 Fla. 1258, 116 So. 642, 643, this court said:
>
> > 'An equitable estoppel, as affecting land titles, is a doctrine by which a party is *prevented* from setting up his legal title because he has through his *acts, words,* or *silence* led another to take a *position* in which the assertion of the legal title would be *contrary to equity* and good *conscience*'." (Emphasis supplied)

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[3] "The primary purpose of government is to protect the people." Respondent's legal counsel speaking, 11/22/66, on ordinance to keep young people out of Sunset Strip, Hollywood, California.

In *Citizens Suburban Co. v. Rosemont Development Co.*, 53 Cal. Rptr. 551 (Sept. 1966), the California Appellate Court at page 560 said:

> "It is enough that a party may have been induced to refrain from taking steps to retrieve his position and to avoid loss. (*Banner v. Industrial Acc. Comm.*, 26 Cal. 2d 346, 349, 350, 159 P.2d 24.)"

The court further observed:

> "Good conscience required Price to disclose the facts. An *estoppel arises* from silence where there is a duty to disclose; where the party has an opportunity to disclose and knowing that the *circumstances* require him to disclose, remains silent. (People v. Ocean Shore Railroad, 32 Cal. 2d 406, 421-422, 196 P.2d 570, 6 A.L.R.2d 1179; 18 Cal. Jur. 2d Estoppel 8, pp. 408-409.)"(Emphasis supl'd)

As has been outlined in the Statement of the Case the respondent must admit the Petitioner was denied knowledge of the true facts by silence in respect to the property in that a long period of time ensued during which there was correspondence of over a dozen letters but finally only after the prodding of the correspondence was it disclosed that his property was involved. It should seem clear that the controlling fact confirming the estoppel is demonstrated and proven by the again quoted words of the respondent as the Appellee in its brief:

> "Appellee would point out that the *only* misinformation contained in that letter *is the legal description* contained therein." (Emphasis supplied)

In *Glus v. Brooklyn Eastern District Terminal*, 79 S. Ct. 760, at page 762, this Court said:

> "To decide the case we need look no further than the maxim that no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to *bar* INEQUITABLE RELIANCE on *Statutes of Limitations*. In *Schroeder v. Young*, 161 U.S. 334, 16 S. Ct. 512, 40 L. Ed. 721, this Court allowed a debtor to redeem property sold

to satisfy a judgment after the statutory time for redemption had expired although the statute granting the right to redeem also limited that right as to time. The Court held that the purchasers could not rely on the limitation because one of them had told the debtor 'that he would not be pushed, that the statutory time to redeem would not be insisted upon; [the debtor] believed and relied upon such assurance.' The Court pointed out that in 'such circumstances the courts have held with great unanimity that the purchaser is estopped to insist upon the statutory period, notwithstanding *the assurances* were *not in writing*, and were made without consideration, upon the ground that the debtor was lulled into a false security.' 161 U.S. at page 344, 16 S. Ct. at page 516.

"As Mr. Justice Miller expressed it in *Insurance Co. v. Wilkinson*, 13 Wall. 222, 233, 20 L. Ed. 617. The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage. And although the cases to which this principle is to be applied are not as well defined as could *be* wished, the *general doctrine* is well understood and *is applied* by courts of law as well as equity *where* the *technical advantage* thus obtained is set up and relied on to defeat the ends of justice."

CONCLUSION

For the reasons stated herein the county should accept the tax payment and relinquish any claims to the property.

Respectfully submitted,

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APPENDIX A

[R. 157-158]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D. J. Miller,
Appellant,
vs.
County of Los Angeles, a Political Subdivision of the State of California,
Appellee.
No. 20,436

[July 21, 1966]

On Appeal from the United States District Court for the Southern District of California, Central Division.

Before: JERTBERG and ELY, Circuit Judges, and JAMESON, District Judge.

PER CURIAM:

Appellant, plaintiff in the District Court, and a citizen and resident of the State of Nevada, appeals from a summary judgment entered in favor of appellee, adjudging and decreeing that the appellee is the owner of certain described real property located in the County of Los Angeles, State of California, and that the appellant has no right, title, interest, or estate in and to the same.

The action was instituted by appellant on December 31, 1963, by the filing of a complaint which was superseded by an amended complaint filed on January 27, 1964. The amended complaint is entitled "Complaint for Declaratory Relief and To Impress Constructive Trust on Real Property for Damages and for Unjust Enrichment." In the amended complaint plaintiff claims to be the owner of the

property in question and alleges that appellee acquired title to said real property through alleged surreptitious and unlawful tax sales proceedings, and seeks to have it declared that title to said property is held in trust by appellee, and that title to said property be vested in appellant on payment of all delinquent taxes and penalties accruing prior to appellant's demand upon appellee for reconveyance of title to appellant.

The District Court dismissed the action without leave to amend. On appeal to this court, by appellant, from such order of dismissal, we construed the order dismissing the action to be based upon lack of any jurisdiction in the District Court to entertain the action, and held that the allegations of the amended complaint were sufficient to invoke the jurisdiction of the District Court under 28 U.S.C. § 1331.[1] We further held that the allegations of the amended complaint were not sufficient to invoke the diversity jurisdiction of the District Court under 28 U.S.C. § 1332. In reversing and remanding the cause to the District Court we stated that we were not in any way passing upon the merits of appellant's claimed grievance. *Miller v. County of Los Angeles, a Political Subdivision of the State of California*, 341 F.2d 964 (1965).

On remand appellee moved for summary judgment on the grounds that appellant's cause of action is barred by the provisions of Sections 175, 3521, and 3809 of the Revenue and Taxation Code of the State of California. The motion was heard on the affidavits, and thereafter the District Court made findings of fact, conclusions of law, and entered judgment in favor of appellee.

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[1] "§ 1331. Federal question; amount in controversy; costs

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

From our examination of the record, we are satisfied that there existed in the cause no genuine issue as to a material fact, and that the District Court, under applicable decisions of the reviewing courts of the State of California, properly caused to be entered the summary judgment appealed from.

Affirmed.

APPENDIX B

[R. 160]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Wednesday September 21, 1966.

Before: JERTBERG and ELY, Circuit Judges and JAMESON, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed September 12, 1966, and within time allowed therefor by rule of court, and a valid extension thereof, for a rehearing of above cause be, and hereby is denied.

APPENDIX C

STATUTES INVOLVED

Revenue and Taxation Code of the State of California:

Sec. 175. All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Sections 3618 to 3636 of this code.

Sec. 3358. After the first publication of the notice of the deed to the State of tax-sold property and not less than 21 nor more than 35 days before the date of deeding, when tax-sold property is to be deeded, the tax collector shall send by registered mail to the last assessee of the tax-sold property at his last known address either a copy of the publication or a printed notice of deeding the property to the State. To ascertain the address of the last assessee of the tax-sold property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

Sec. 3521. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the deed can only be commenced within one year after the date of recording of the deed to the State in the county recorder's office or within one year after June 1, 1941, whichever is later.

Sec. 3799. The tax collector shall mail a copy of the notice not less than 21 nor more than 28 days prior to the effective date of the agreement, by registered mail to the last assessee of each portion of the property at his last known address.

To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

It is not necessary to mail a copy of the notice to any party who files with the tax collector a written acknowledgment of receipt of a copy of the notice or a waiver of the notice.

Sec. 3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument.

Civil Procedure Code

Sec. 338. [Within three years.] Within three years:

* * *

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.